

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Deck et al.
Serial No. : 10/534,934
Filed : September 13, 2005
For : Wireless Communication
Group Art Unit : 2612
Confirmation No. : 3644
Examiner : Hung Q. Dang

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF

In support of the Pre-Appeal Brief Request for Review filed herewith, Applicants present a pre-appeal brief in the above-captioned application.

This is a pre-appeal brief regarding the Examiner's final rejection of claims 47, 48, and 51-75 in the Final Office Action dated April 1, 2010.

ARGUMENT

I. The 35 U.S.C. § 112, First Paragraph, Rejection of Claims 47-48 Should Be Reversed.

In the Final Office Action, the Examiner rejected claims 47-48 under 35 U.S.C. § 112, first paragraph, for failing to comply with the enablement requirement. (See 4/1/10 Office Action, p. 5). Specifically, the Examiner states that it is unclear why the claim 47 recites an “A/D converter” since “the ‘measured signal’ is numerical time value corresponding to the time delay of the reflected transmitted signal.” (*Id.* at p. 6). Applicants respectfully disagree and direct the Examiner’s attention to paragraph [031] in the originally filed application, which states

“the measured signal 9 may be converted from an ultrasound signal into an electrical signal in the measured signal receiver 4...[s]ubsequently, the measured signal 9 is output by a data output 10 of the measured signal receiver 4 and received by a data input 11 of the A/D converter 5 and digitized in the A/D converter 5.”

So, the electrical signal, which is neither a time value nor in digital format, is digitized by the claimed A/D converter. Applicants, therefore, respectfully submit that specification does enable one of ordinary skill in the art to understand how the measured signal is used to determine the fill level. Accordingly, it is respectfully submitted that claims 47 and 48 are allowable.

II. The 35 U.S.C. § 103(a) Rejection Of Claims 47, 48, 51, 53-56, 58, And 60-75 As Obvious Over Michalski Should Be Reversed.

In the Final Office Action, the Examiner rejected claims 47, 48, 51, 53-56, 58, and 60-75 as obvious over Michalski et al. (U.S. Publ. Appln. No. 2004/0074295). (See 4/1/10 Office Action, p. 6). The Examiner correctly acknowledges that Michalski fails to disclose or suggest *“a processor configured to only assume activating the measured signal receiver, the A/D converter, and the transceiver device in such a way that, that the measured signal is digitized and subsequently transmitted without signal processing after the A/D conversion, via the transceiver device, to the environmental device, the environmental device being coupled to an analysis unit which converts the measured signal into a measured value,”* as recited in claim 47. (*Id.* at p. 7). To cure the deficiency, the Examiner merely states,

“if the ‘time delay value’ is designed to be converted into a ‘measured value’ at a remote location, then NO signal processing

of said ‘time delay value’ would be locally required, and vice versa...if said ‘time delay value’ is designed to be converted at a remote unit, the hardware requirement of said sensor unit would be preferably kept to the minimal, enough to perform the data transmission; in this case, the minimal hardware requirements would clearly be the measured signal receiver and the transceiver device.”

(*Id.* at pp. 7-8). Initially, Applicants would like to point out that the term “time delay value” was invented by the Examiner and is not in the present application. To support the use of this term, the Examiner states that “[n]either the specification nor the drawing adequately provides enough support as to how such received out-of-phase signal can be used to determine the fill level.” (*Id.* at p. 4). Applicants respectfully disagree and direct the Examiner’s attention to paragraph [031] in the originally filed application, which states “the measured signal 9 may be converted from an ultrasound signal into an electrical signal in the measured signal receiver 4.” This electrical signal is also referred to as “measured signal 9” in the following sentence in the specification. In view of the cited portion of the specification, one of ordinary skill in the art would understand that after this electrical signal is converted into a digital signal it is sent to the environmental device for processing of the digitized signal, which yields a value for the fill level.

Furthermore, although the Examiner has not explicitly taken Official Notice to cure the deficiencies of Michalski, the Examiner impliedly takes Official Notice because no references are proffered to cure the deficiencies of Michalski. Instead providing references to cure the deficiencies of Michalski, the Examiner uses improper hindsight reconstruction to render the claims obvious. In the response filed on November 19, 2009, Applicants requested that the Examiner provide a reference supporting the Examiner’s contentions that it would have been obvious to one of ordinary skill in the art to modify the device of Michalski in view of “common knowledge” to arrive at the claimed invention. However, the Examiner has not provided any such reference and continues to rely on improper hindsight reconstruction. Specifically, the Examiner “maintains that one of ordinary skill in the art is expected to possess certain common knowledge in the field of endeavor.” (*See* 4/1/10 Office Action, p. 4). Applicants remind the Examiner that the obviousness of a claim should be based on references and not on the Examiner’s subjective view. Applicants again respectfully request that the Examiner provide a reference or references in the next Office Action allegedly offering evidence that this is the case.

However, if the Examiner cannot provide sufficient references to support his contentions, then it is respectfully requested that the Examiner indicate that claim 47 and its dependent claims 48, 51, 53-56, 58, 60-71, and 75 are allowable.

Applicants respectfully submit that one of ordinary skill in the art would not modify Michalski's device to process the measured signal at a remote apparatus or, as in the claimed invention, an environmental device since Michalski processes the measured signal in the sensor (2) itself. (See Michalski, ¶¶ [0013]-[0014]). Applicants respectfully Michalski fails to disclose or suggest "*a processor configured to only assume activating the measured signal receiver, the A/D converter, and the transceiver device in such a way that, that the measured signal is digitized and subsequently transmitted without signal processing after the A/D conversion, via the transceiver device, to the environmental device, the environmental device being coupled to an analysis unit which converts the measured signal into a measured value,*" as recited in claim 47. It is, therefore, respectfully submitted that claim 47 and its dependent claims 48, 51, 53-56, 58, 60-71, and 75 are allowable.

III. The 35 U.S.C. § 103(a) Rejection of claims 52, 57, and 59
As Obvious Over Michalski and Soliman Should Be Reversed

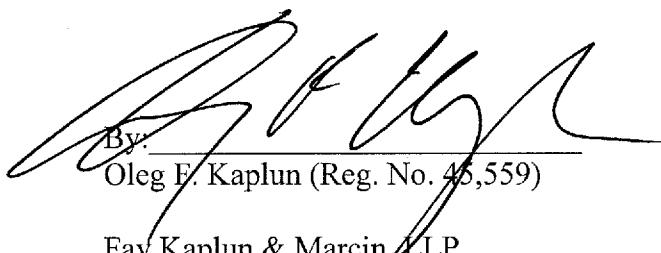
In the Final Office Action, the Examiner rejected claims 52, 57, and 59 as obvious over Michalski and Soliman et al. (U.S. Publ. Appln. No. 2003/0174067). Soliman discloses a method and apparatus for wireless remote telemetry using ad-hoc networks, wherein a reading interface transforms light pulses to analog electric pulses, transmitted the analog electric pulses to an analog multiplexer where the pulses pass to an A/D converter to convert the pulses to digital signals that are then passed to a microprocessor. The microprocessor calculates and stores the total consumption and generates a consumption message to be transmitted to a central controller. Since Soliman teaches the digitized signals are processed, it is clear that Soliman also fails to disclose or suggest "*the measured signal is digitized and subsequently transmitted without signal processing after the A/D conversion,*" as recited in claim 47.

Applicants respectfully submit that Soliman fails to cure the deficiencies of Michalski, which are correctly acknowledged by the Examiner, and that Michalski and Soliman, taken alone or in combination, fail to disclose or suggest "*an A/D converter digitizing the measured signal*" and "*a processor configured to only assume activating the measured signal receiver, the A/D converter, and the transceiver device in such a way that, that the measured signal is digitized and subsequently transmitted without signal processing after the A/D conversion, via the transceiver device, to the environmental device, the environmental device being coupled to an analysis unit which converts the measured signal into a measured value,*" as recited in claim 47. Because claims 52, 57, and 59 depend on and, therefore, contain all of the limitations of claim 47, it is respectfully submitted that these claims are also allowable.

For the reasons set forth above, the Applicants respectfully request that the final rejections of claims 47, 48, and 51-75 be reversed and that these claims be allowed.

Respectfully submitted,

Dated: June 30, 2010


By: Oleg E. Kaplun (Reg. No. 46,559)
Fay Kaplun & Marcin LLP
150 Broadway, Suite 702
New York, New York 10038
Tel: (212) 619-6000
Fax: (212) 619-0276